

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHNNY OREN PURCELL,

Defendant and Appellant.

B220749

(Los Angeles County  
Super. Ct. No.VA109914)

Appeal from a judgment of the Superior Court of Los Angeles County, Michael A. Cowell, Judge. Affirmed.

Gloria C. Cohen, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A Taryle and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

---

## INTRODUCTION

After grabbing a teenager's cellular telephone at gunpoint, defendant Johnny Oren Purcell was charged and convicted of robbery (Pen. Code, § 211), with a finding he personally used a firearm to commit the offense (*id.*, § 12022.53, subd. (b)). In a bifurcated proceeding, the trial court found defendant had previously suffered a prior serious or violent felony conviction, a juvenile adjudication for robbery, within the meaning of the "Three Strikes" law (*id.*, §§ 667, subds. (b)-(i), 1170.12). The trial court sentenced defendant as a second strike offender to the upper term of five years, doubled to 10 years, plus an additional 10 years on the firearm use enhancement, for a total term of 20 years in state prison.

Defendant's sole challenge on appeal is to the trial court's use of his prior juvenile adjudication as a prior strike conviction. We affirm.

## DISCUSSION<sup>1</sup>

Defendant argues the trial court's use of his juvenile adjudication as a strike for the purpose of imposing sentence under the Three Strikes law violated his right to a jury trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. In support of his contention, defendant relies on *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120 S.Ct. 2348, 147 L.Ed.2d 435], in which the nation's high court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (*Id.* at p. 490.) Defendant maintains that since the facts in a juvenile adjudication are determined by the juvenile court, rather than a jury, a juvenile offense cannot qualify as a strike.

---

<sup>1</sup> We do not recite the underlying facts because they are not pertinent to the issue on appeal. (See *People v. White* (1997) 55 Cal.App.4th 914, 916, fn. 2.)

Defendant concedes the California Supreme Court decided the issue against his position in *People v. Nguyen* (2009) 46 Cal.4th 1007, 1022, 1028 [“the absence of a constitutional or statutory right to jury trial under the juvenile law does not, under *Apprendi*, preclude the use of a prior juvenile adjudication of criminal misconduct to enhance the maximum sentence for a subsequent adult felony offense by the same person”].) Defendant also acknowledges we are bound by that ruling. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) He nevertheless raises the issue to preserve it for federal review.

### **DISPOSITION**

The judgment is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.